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EXAMINER
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DARNO, PATRICK A

ART UNIT	PAPER NUMBER
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2163

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/517,253

Applicant(s)

HAWLEY, ADAM STANLEY  
JAMES

Examiner

Patrick A. Darno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/08/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 15, 19-21, and 23 have been amended. Claims 1-27 are pending in this office action.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 15-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,092,178 issued to Anita Jindal et al. (hereinafter "Jindal") in further view of U.S. Patent Application Publication Number 2005/0149531 issued to Sunil K. Srivastava (hereinafter "Srivastava").

#### **Claim 1:**

Jindal discloses a method of providing a service to a client from one of a plurality of servers, each of the servers being capable of providing the service to the client and each of the servers being associated with a service address common to all of the servers, the method comprising the steps of:

receiving a request for the service from the client, the request specifying the common service address (*Jindal: column 5, lines 48-52 and column 5, lines 58-59 and column 7, lines 1-9 and Fig. 1*);

in response to the request, connecting the client to one of the plurality of servers (*Jindal: column 6, lines 33-38 and column 7, lines 1-9 and Fig. 1; The client is first connected to the DNS server. Then the DNS server connects the client to the "preferred" server.*);

receiving information identifying each of the plurality of servers from the server to which the client is connected (*Jindal: column 6, lines 44-54 and column 7, lines 19-26; The first reference shows the information that can be retrieved. Compare this information with the information that the applicant retrieves about the servers in paragraphs [0020]-[0024] of the applicant's specification. The Jindal reference tracks all of the information concerning the server that the applicant tracks and more. The second reference shows how this information is retrieved. Note the DNS server is "the server to which the client is connected.); and*

selecting one of the plurality of servers as the server to be used to provide the service to the client (*Jindal: column 7, lines 2-5*).

Jindal does not explicitly disclose wherein the receiving of information identifying each of a plurality of servers from the server to which the client is connected and selecting one of the plurality of servers to be used to provide the service to the client occurs at the client. However, Jindal does suggest that the receiving of information and selecting of the server can occur at another computer system separate from the DNS server (*Jindal: column 7, lines 17-18; The "trigger" is executable code that causes the retrieval of the server information from multiple servers and then causes analysis of this retrieved information in order to choose a server. Since the trigger can be located at another computer system (different system than the DNS Server) the actions the trigger produces must also be able to occur at locations other than the DNS server.*).

Furthermore, Srivastava discloses receiving information identifying each of a plurality of servers from the server to which the client is connected and selecting one of the plurality of servers to be used to used to provide the service to the client occurs at the client (*Srivastava: paragraph [0005], lines 8-11*).

It would have been obvious to one of ordinary skill in the art the time the invention was made to modify the invention of Jindal with the teachings of Srivastava noted above for the purpose of receiving information identifying each of the plurality of servers from the server to which the client is connected and selecting one of the plurality of servers as the server to be used to provide the service to the client (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the invention of Jindal per the above such that the gathered server description information can be used to assist the client in selecting a server (*Srivastava: paragraph [0005], lines 8-11*).

**Claim 2:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses information relating to the status of each of the plurality of servers (*Jindal: column 6, lines 44-50; Note specifically 'operational status (e.g., whether it is up or down).'*). Jindal does not explicitly disclose the step of providing the client with this information. The applicant's purpose of providing the client with this information is so that the client can select a certain server from a plurality of servers (*Applicant's Specification: paragraph [0006]*).

However, Srivastava discloses the step of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the teachings of Jindal with the further teachings of Srivastava noted above for the purpose of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the teachings of Jindal as noted above for the

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purpose of sending server information to a client concerning a plurality of servers that may assist the client in choosing a particular server (*Srivastava: paragraph [0005], lines 8-11*).

**Claim 3:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses information relating to the number of users being served by each of the plurality of servers (*Jindal: column 6, lines 44-50; Note specifically 'the number of clients connected.'*). Jindal does not explicitly disclose the step of providing the client with this information. The applicant's purpose of providing the client with this information is so that the client can select a certain server from a plurality of servers (*Applicant's Specification: paragraph [0006]*).

However, Srivastava discloses the step of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the teachings of Jindal with the further teachings of Srivastava noted above for the purpose of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the teachings of Jindal as noted above for the purpose of sending server information to a client concerning a plurality of servers that may assist the client in choosing a particular server (*Srivastava: paragraph [0005], lines 8-11*).

**Claim 4:**

The combination of Jindal and Srivastava discloses all the elements of claim 3, as noted above, and Jindal further discloses wherein the step of selecting the server includes selecting the server in dependence on the number of users being served by each of the plurality of servers

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*(Jindal: column 6, lines 33-36 and column 6, lines 44-50; The first reference shows that information is collected and analyzed to determine choosing a 'preferred server.' The second reference shows that the information that is analyzed contains the number of users connected to a server. So the selection of a server is dependent on the number of connected users.).*

**Claim 5:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses information relating to a grouping to which each of the plurality of servers belong (*Jindal: column 11, lines 23-35*). Jindal does not explicitly disclose supplying the user with this information. The applicant's purpose of providing the client with this information is so that the client can select a certain server from a plurality of servers (*Applicant's Specification: paragraph [0006]*).

However, Srivastava discloses the step of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the teachings of Jindal with the further teachings of Srivastava noted above for the purpose of providing the client with information about a plurality of servers (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the teachings of Jindal as noted above for the purpose of sending server information to a client concerning a plurality of servers that may assist the client in choosing a particular server (*Srivastava: paragraph [0005], lines 8-11*).

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**Claim 6:**

The combination of Jindal and Srivastava discloses all the elements of claim 5, as noted above, and Jindal further discloses including selecting the server in dependence on the grouping (*Jindal: column 11, lines 23-35*).

**Claim 7:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses wherein the step of selecting a server comprises randomly selecting a server (*Jindal: column 2, lines 14-17*).

**Claim 8:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses routing the client request to one of the plurality of servers using a DNS round-robin algorithm (*Jindal: column 1, lines 45-48*).

**Claim 9:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses wherein each of the plurality of servers holds information relating to all of the servers (*Jindal: column 7, lines 30-38; The reference here discloses a single server querying other servers for their operational information. Upon receiving the result of the query, the server is holding information relating to all of the other servers. The examiner maintains that since one server performs this function, it would be an obvious design choice to have all the servers perform this operation if desired.*).

**Claim 10:**

The combination of Jindal and Srivastava discloses all the elements of claim 9, as noted above, and Jindal further discloses including the step of communicating said information

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between the servers in real-time (*Jindal: column 7, lines 30-38 and column 3, lines 50-54; The first reference discloses how the trigger gathers information from a plurality of servers. The second reference shows that the triggers conduct real-time interrogations (queries) of application servers.*).

**Claim 11:**

The combination of Jindal and Srivastava discloses all the elements of claim 9, as noted above, and Jindal further discloses wherein the information includes one or more of information identifying each of the servers (*Jindal: column 6, lines 1-5*), status information for each of the servers (*Jindal: column 6, lines 44-50; Note specifically 'operation status.'*), information defining the number of users connected to each of the servers (*Jindal: column 6, lines 44-50; Note specifically 'number of clients connected.'*), and grouping information for each of the servers (*Jindal: column 11, lines 23-35*).

**Claim 12:**

The combination of Jindal and Srivastava discloses all the elements of claim 1, as noted above, and Jindal further discloses a method further comprising requesting a connection to the selected server (*Jindal: column 2, lines 2-7 and column 5, lines 19-25*).

**Claim 15:**

Jindal discloses a client for use in a client-server system, the client being arranged to:  
request a service, the request specifying a service address common to all of a plurality of servers, each of the plurality of servers being capable of providing the service to the client (*Jindal: column 5, lines 48-52 and column 5, lines 58-59 and column 7, lines 1-9 and Fig. 1*);

connect to one of the plurality of servers (*Jindal: column 6, lines 33-38; The client is connected to the "preferred" server.*);

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receive information from the server to which the client is connected (*Jindal: column 2, lines 47-50; Note the client receives information sent from a server.*),

Jindal does not explicitly disclose wherein said received information identifying each of the plurality of servers; and select one of the plurality of servers as the server to be used to provide the service to the client. However, Srivastava discloses wherein said information identifying each of the plurality of servers (*Srivastava: paragraph [0005], lines 8-11*); and select one of the plurality of servers as the server to be used to provide the service to the client (*Srivastava: paragraph [0005], lines 8-11*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Jindal with the teachings of Srivastava noted above for the purpose of using a client to receive information identifying each of a plurality of servers; and select one of the plurality of servers as the server to be used to provide the service to the client (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the invention of Jindal per the above such that the gathered server description information can be used to assist the client in selecting a server (*Srivastava: paragraph [0005], lines 8-11*).

**Claim 16:**

Claim 16 is rejected under the same reasons set forth in the rejection of claim 2.

**Claim 17:**

Claim 17 is rejected under the same reasons set forth in the rejection of claim 3.

**Claim 18:**

Claim 18 is rejected under the same reasons set forth in the rejection of claim 5.

**Claim 19:**

Claim 19 is rejected under the same reasons set forth in the rejection of claim 7.

**Claim 20:**

Claim 20 is rejected under the same reasons set forth in the rejection of claim 11.

**Claim 21:**

Jindal discloses a server for use in a client-server system having a plurality of servers, each of the servers being capable of providing a service to the client and each of the servers being associated with a service address common to all of the servers, the server being arranged to:

receive information relating to each of the plurality of servers (*Jindal: column 7, lines 30-38; This reference discloses a server querying a plurality of servers for information that is analyzed in order to choose one of a plurality of servers. The server that sends a query then receives information that as a result of the query.*);

connect to the client in response to a request from the client for the service, the request specifying the common service address (*Jindal: column 5, lines 48-52 and column 5, lines 58-59 and column 7, lines 1-9 and Fig. 1*);

send information to the client (*Jindal: column 2, lines 47-50; Note the client receives information sent from a server.*); and

connect to the client in response to a selection of one of the plurality of servers as the server to be used to provide the service to the client (*Jindal: column 7, lines 2-5*).

Jindal does not explicitly disclose wherein the sent information is information identifying each of the plurality of servers to the client; and wherein the selection of one of a plurality of servers occurs at the client. However, Srivastava discloses wherein the sent information is

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information identifying each of the plurality of servers to the client (*Srivastava: paragraph [0005], lines 8-11*); and wherein the selection of one of a plurality of servers occurs at the client (*Srivastava: paragraph [0005], lines 8-11*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Jindal with the teachings of Srivastava noted above for the purpose of using a server to send information identifying each of a plurality of servers; and selecting, at the client, one of the plurality of servers as the server to be used to provide the service to the client (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the invention of Jindal per the above such that the gathered server description information can be used to assist the client in selecting a server (*Srivastava: paragraph [0005], lines 8-11*).

**Claim 22:**

The combination of Jindal and Srivastava discloses all the elements of claim 21, as noted above, and Jindal further discloses comprising a Real-Time Text Protocol server (*Jindal: column 3, lines 50-54; Since the triggers executed by the server transfer data in real time, the server must be a Real-Time Text Protocol Server.*).

**Claim 23:**

Jindal discloses a client-server system having a plurality of servers, each of the servers being capable of providing the service to the client and each of the servers being associated with a service address common to all of the servers, the system being arranged to:

communicate information between the servers so that each of the plurality of servers maintains information relating to all of the servers (*Jindal: column 7, lines 30-38; This reference discloses*

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*a server querying a plurality of servers for information that is analyzed in order to choose one of a plurality of servers. The server that sends a query then receives information that as a result of the query.);*

receive a request for the service from the client, the request specifying the common service address (*Jindal: column 5, lines 48-52 and column 5, lines 58-59 and column 7, lines 1-9 and Fig. 1*);

connect the client to one of the plurality of servers in response to the request (*Jindal: column 7, lines 2-7*);

send server information to the client from the server to which the client is connected (*Jindal: column 2, lines 47-50; Note the client receives information sent from a server.*); and,

select one of the plurality of servers as the server to be used to provide the service to the client (*Jindal: column 7, lines 2-5*).

Jindal does not explicitly disclose wherein the sent information is information identifying each of the plurality of servers to the client; and, wherein selecting one of the plurality of servers occurs at the client. However, Srivastava discloses wherein the sent information is information identifying each of the plurality of servers to the client (*Srivastava: paragraph [0005], lines 8-11*); and, selecting one of the plurality of servers occurs at the client (*Srivastava: paragraph [0005], lines 8-11*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Jindal with the teachings of Srivastava noted above for the purpose of sending information identifying each of a plurality of servers to the client; and, wherein the means for selecting one of the plurality of servers occurs at the client (*Srivastava: paragraph [0005], lines 8-11*). The skilled artisan would have been motivated to improve the invention of Jindal per the above such that the gathered server description information can be used to assist the client in selecting a server (*Srivastava: paragraph [0005], lines 8-11*).

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**Claim 24:**

Claim 24 is rejected under the same reasons set forth in the rejection of claim 2.

**Claim 25:**

Claim 25 is rejected under the same reasons set forth in the rejection of claim 3.

**Claim 26:**

Claim 26 is rejected under the same reasons set forth in the rejection of claim 22.

**Claim 27:**

The combination of Jindal and Srivastava discloses all the elements of claim 23, as noted above, and Jindal further discloses wherein the servers are operable to communicate in real-time (*Jindal: column 7, lines 30-38 and column 3, lines 50-54; The first reference discloses how the trigger gathers information from a plurality of servers. The second reference shows that the triggers conduct real-time interrogations (queries) of application servers.*).

3. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jindal in view of Srivastava and further in view of U.S. Patent Application Publication Number 2003/0149653 issued to Neill Penney (hereinafter "Penney").

**Claim 13:**

The combination of Jindal and Srivastava discloses all the elements of claim 12, as noted above, but does not explicitly disclose in the event that the connection to the selected server fails, attempting to reconnect to the selected server. However, Penney discloses in the event that the connection to the selected server fails, attempting to reconnect to the selected server (*Penney: paragraph [0026], lines 1-2*). It would have been obvious to one of ordinary skill in the art at the time

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the invention was made to modify the previously mentioned combination with the teachings of Penney noted above. The skilled artisan would have been motivated to improve the teachings of the previously mentioned combination per the above such that the client would be granted a second chance to connect to the desired server resulting in greater client satisfaction.

**Claim 14:**

The combination of Jindal, Srivastava, and Penney discloses all the elements of claim 13, as noted above, and Srivastava further discloses in the event that the reconnection attempt fails, re-requesting the service to obtain the identifying information for servers configured to provide the service (*Srivastava: paragraph [0005], lines 8-11; This reference shows presenting server information to a client so that the client can choose a server to connect to. This is exactly what the applicant is claiming here. A reconnection after a failed connection is still simply a connection. Therefore both the reference and the claimed invention of the applicant both perform the same function of simply presenting server information to the client in order to assist the client in choosing a server to connect to.*).

***Response to Arguments*****Applicant Argues:**

Jindal fails to teach or suggest the steps of "receiving, at the client, information identifying each of the plurality of servers from the server to which the client is connected, and selecting, at the client, one of the plurality of servers as the server to be used to provide the service to the client," as recited in claim 1. As disclosed in Jindal, once a client connection is made to the server capable of providing the service, no further load-balancing operations, connections, or information for selecting is passed between any computer. Therefore, Jindal does not teach or suggest the steps of "receiving, at the client, information identifying each of the plurality of servers from the server to which the client is connected, and selecting, at the client, one of the plurality of servers as the server to be used to provide the service to the client," as recited in claim 1.

In addition, the Applicant respectfully disagrees with the Examiner's alternative interpretation that the "server to which the client is connected" can be read as not the "preferred server" of Jindal, but the "DNS server 100." Claim 1 recites "selecting, at the client, one of the plurality of servers as the server to be used to provide the service to the client." Thus, the selected server is the server used to provide the

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service to the client. The Applicant respectfully submits the DNS server of Jindal is not the server that provides the service to the client. Rather the DNS Server of Jindal merely provides name service lookup, not the service that is being accessed by the client. Even if one were to assume the DNS server of Jindal were capable of providing some form of service, only one DNS server is disclosed, and even if a plurality of DNS servers were disclosed, one skilled in the art would appreciate that they could not have a "common service address," as recited in claim1.

**Examiner Responds:**

Examiner is not persuaded. The Examiner respectfully disagrees with the Applicant's interpretation of the Jindal reference. Specifically the Applicant recites, "As disclosed in Jindal, once the client connection is made to the server capable of providing service, no further load-balancing operations, connections, or information for selecting is passed between any computer." This statement made by the Applicant is false due to the Applicant's misinterpretation of the Jindal reference.

The Jindal reference does in fact carry out further load-balancing operations, connections, and passes information for selecting servers after a client connection is made to the server. Clearly stated in the Examiner's non-final office action is the fact that "the server to which the client is connected" is the DNS server 100. In the Jindal reference, the client connects to a server (DNS Server 100) which gathers server information from a plurality of servers that provide a service and then the DNS server chooses the server which is best suited to handle the client's request (Jindal: column 5, lines 48-59 and column 7, lines 1-9). Once a 'preferred server' is found, the DNS server 100 connects the client to the 'preferred server'.

So after the client is connected to one of the plurality of servers (DNS server 100), the server continues to do load-balancing, connections, and passing information about selected servers until a 'preferred server' is located. When the 'preferred server' is located, it is selected,

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and the client is connected to it (Jindal: column 6, lines 33-43; Note this operation continues to periodically select new servers.). The Jindal reference reads perfectly upon the Applicant's claimed invention except for the fact that the receiving information and selecting a server occurs on the server side. This fact is clearly portrayed in the Examiner's 35 U.S.C. 103(a) as part of the Examiner's process of following the *Graham v. John Deere* factual inquiries. While the Jindal reference fails to teach this aspect, the Srivastava reference clearly discloses wherein the information received and the selection process occurs at the client, but this matter will be addressed later.

Finally, as explained above, the Examiner's interpretation of the "the server to which the client is connected" is in fact correct. Furthermore, the Jindal reference, as shown in Fig. 1, discloses one DNS server 100, which connects the client to multiple service provider servers which are all specified under a common service address (Jindal: column 7, lines 5-9).

The Examiner hopes the explanation given above clarifies Examiner's interpretation of the Jindal reference. The Examiner remains convinced that the combination of Jindal and Srivastava discloses all the elements of the Applicant's invention recited in claim 1. Therefore, the rejections given under 35 U.S.C. 103(a) are upheld.

**Applicant Argues:**

Further, Srivastava does not supply the missing limitations of claim 1. The background of Srivastava suggests that a client may perform lookups at the DNS server but does not teach or suggest a lookup could occur at the one of the plurality of servers capable of providing the service, therefore the combination of Jindal and Srivastava (assuming, without admitting, that the combination was proper and feasible) would not render obvious that which is recited in claim 1.

**Examiner Responds:**

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Examiner is not persuaded. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "but does not teach or suggest a lookup could occur at the one of the plurality of servers capable of providing the service...") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Nowhere, in Applicant's claim 1, is it required that the "lookup could occur at the one of the plurality of servers capable of providing a server." Since this argument appears to be directed to limitations that are not claimed, this argument is moot because limitations from the specification are not read into the claims.

The only limitations that the Srivastava reference was used for are the limitations regarding identifying a server and selecting a server at the client. As cited in the Examiner's office action, the Srivastava reference clearly discloses identifying a server and selecting a server at the client (Srivastava: paragraph [0005], lines 8-11). The reference in and of itself is very clear, so no further explanation of the Srivastava reference will be given at this time.

The rejections given under 35 U.S.C. 103(a) are upheld.

**Applicant Argues:**

Moreover, the Applicant respectfully submits the combination suggested by the Examiner is the result of improper hindsight analysis of Jindal and Srivastava in light of the teachings of the present invention. Jindal is directed to a load-balancing system that employs executable triggers to perform load-balancing decisions. Srivastava is directed to a load-balancing system that records the results of a series of load-balancing decisions in response to a client request as labels, employing the labels to fast switch subsequent request. Neither reference presents a deficiency that would lead one skilled in the art to combine the references, therefore the conclusion that one skilled in the art would be motivated to combine the references cannot be reached, and is hindsight in view of the Applicant's disclosure, which is improper.

**Examiner Responds:**

Examiner is not persuaded. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Since it is clear that all cited portions of the Examiner's 103(a) rejection is knowledge which was within the level of ordinary skill at the time the claimed invention was made, it is assumed that no knowledge was gleaned only from the Applicant's disclosure. Therefore, the combination cited by the Examiner is believed to be proper. The rejections given under 35 U.S.C. 103(a) are upheld.

**Examiner Notes:**

The rest of the arguments presented by the Applicant appear to be regurgitated based upon the arguments given above. The Examiner directs the Applicant to the explanations given above as well as the Examiner's office action. The above office action lays out a clear and thorough prima facie case which precisely maps all elements of the Applicant's claimed invention.

Furthermore, The only attempt presented to refute the examiner's prima facie case of obviousness has been the Applicant's own arguments and opinions. No evidence has been presented to support the Applicant's arguments and opinions. The examiner notes the rule set forth in 37 C.F.R. 1.111(b) which requires Applicant to "distinctly and specifically point out errors" in the examiner's office action.

Furthermore, it should be noted that arguments, opinions, or conclusions of Applicant and the Applicant's counsel cannot take the place of evidence (See *In re Budnick*, 537 F.2d at 538, 190 USPQ at 424; *In re Schulze*, 346 F.2d 600, 145 USPQ 716 (CCPA 1965); *In re Cole*, 326 F.2d 769, 140 USPQ 230 (CCPA 1964)).

The rejections given under 35 U.S.C. 103(a) are upheld.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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***Contact Information***

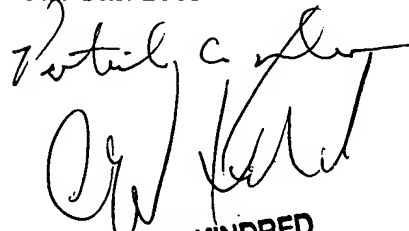
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick A. Darno whose telephone number is (571) 272-0788. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PAD

Patrick A. Darno  
Examiner  
Art Unit 2163

  
**ALFORD KINDRED  
PRIMARY EXAMINER**